

AMENDED IN SENATE JUNE 20, 2000

AMENDED IN SENATE JUNE 7, 2000

AMENDED IN ASSEMBLY APRIL 21, 1999

AMENDED IN ASSEMBLY APRIL 12, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 996

Introduced by Assembly Member Papan

(Principal coauthor: Senator Leslie)

(Coauthors: Assembly Members Cox and Dutra)

*(Coauthors: Senators Costa, Johannessen, Johnson,
Karnette, and Polanco)*

February 25, 1999

An act to amend Section 2941 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 996, as amended, Papan. Mortgages and deeds of trust.

Existing law provides that when any mortgage has been satisfied, the mortgagee, or its assignee, shall execute and record, or cause to be recorded, a certificate of discharge, except as specified. Existing law also provides that when an obligation secured by a deed of trust has been satisfied, the beneficiary, or its assignee, shall execute a full reconveyance and record or cause it to be recorded, except as specified.

This bill would define the phrases “cause to be recorded” and “cause it to be recorded” for the purposes described

above to include, but not be limited to, depositing in the United States mail the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office in which the deed of trust or mortgage is recorded, with first-class postage prepaid. This bill would further provide that fulfilling these provisions would *not be construed to impart constructive notice but would* satisfy specified evidentiary presumptions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2941 of the Civil Code is
2 amended to read:

3 2941. (a) Within 30 days after any mortgage has been
4 satisfied, the mortgagee or the assignee of the mortgagee
5 shall execute a certificate of the discharge thereof, as
6 provided in Section 2939, and shall record or cause to be
7 recorded, except as provided in subdivision (c), in the
8 office of the county recorder in which the mortgage is
9 recorded. The mortgagee shall then deliver, upon the
10 written request of the mortgagor or the mortgagor's
11 heirs, successors, or assignees, as the case may be, the
12 original note and mortgage to the person making the
13 request.

14 (b) (1) When the obligation secured by any deed of
15 trust has been satisfied, the beneficiary or the assignee of
16 the beneficiary shall execute and deliver to the trustee
17 the original note, deed of trust, request for a full
18 reconveyance, and other documents as may be necessary
19 to reconvey, or cause to be reconveyed, the deed of trust.

20 (A) The trustee shall execute the full reconveyance
21 and shall record or cause it to be recorded, except as
22 provided in subdivision (c), in the office of the county
23 recorder in which the deed of trust is recorded within 21
24 calendar days after receipt by the trustee of the original
25 note, deed of trust, request for a full reconveyance, the
26 fee that may be charged pursuant to subdivision (e),

1 recorder's fees, and other documents as may be necessary
2 to reconvey, or cause to be reconveyed, the deed of trust.

3 (B) The trustee shall deliver a copy of the
4 reconveyance to the beneficiary, its successor in interest,
5 or its servicing agent, if known.

6 (C) Following execution and recordation of the full
7 reconveyance, upon receipt of a written request by the
8 trustor or the trustor's heirs, successors, or assignees, the
9 trustee shall then deliver the original note and deed of
10 trust to the person making that request.

11 (2) If the trustee has failed to execute and record, or
12 cause to be recorded, the full reconveyance within 60
13 calendar days of satisfaction of the obligation, the
14 beneficiary, upon receipt of a written request by the
15 trustor or trustor's heirs, successor in interest, agent, or
16 assignee, shall execute and acknowledge a document
17 pursuant to Section 2934a substituting itself or another as
18 trustee and issue a full reconveyance.

19 (3) If a full reconveyance has not been executed and
20 recorded pursuant to either paragraph (1) or paragraph
21 (2) within 75 calendar days of satisfaction of the
22 obligation, then a title insurance company may prepare
23 and record a release of the obligation. However, at least
24 10 days prior to the issuance and recording of a full release
25 pursuant to this paragraph, the title insurance company
26 shall mail by first-class mail with postage prepaid, the
27 intention to release the obligation to the trustee, trustor,
28 and beneficiary of record, or their successor in interest of
29 record, at the last known address.

30 (A) The release shall set forth:

31 (i) The name of the beneficiary.

32 (ii) The name of the trustor.

33 (iii) The recording reference to the deed of trust.

34 (iv) A recital that the obligation secured by the deed
35 of trust has been paid in full.

36 (v) The date and amount of payment.

37 (B) The release issued pursuant to this subdivision
38 shall be entitled to recordation and, when recorded, shall
39 be deemed to be the equivalent of a reconveyance of a
40 deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorneys' fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(c) The mortgagee or trustee shall not record or cause the certificate of discharge or full reconveyance to be recorded when any of the following circumstances exists:

(1) The mortgagee or trustee has received written instructions to the contrary from the mortgagor or trustor, or the owner of the land, as the case may be, or from the owner of the obligation secured by the deed of trust or his or her agent, or escrow.

(2) The certificate of discharge or full reconveyance is to be delivered to the mortgagor or trustor, or the owner of the land, as the case may be, through an escrow to which the mortgagor, trustor, or owner is a party.

(3) When the personal delivery is not for the purpose of causing recordation and when the certificate of discharge or full reconveyance is to be personally delivered with receipt acknowledged by the mortgagor or trustor or owner of the land, as the case may be, or their agent if authorized by mortgagor or trustor or owner of the land.

(d) For the purposes of this section, the phrases "cause to be recorded" and "cause it to be recorded" include, but are not limited to, depositing in the United States mail the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's

1 office of the county in which the deed of trust or
2 mortgage is recorded, with first-class postage prepaid.
3 Compliance with this subdivision shall *not to be*
4 *construed to impart constructive notice but shall* entitle
5 the trustee to the benefit of the presumptions found in
6 Sections 641 and 642 of the Evidence Code.

7 (e) The violation of this section shall make the violator
8 liable to the person affected by the violation for all
9 damages which that person may sustain by reason of the
10 violation, and shall require that the violator forfeit to that
11 person the sum of three hundred dollars (\$300).
12 However, a trustee acting in accordance with subdivision
13 (c) shall not be deemed a violator for purposes of this
14 subdivision.

15 (f) (1) The trustee, beneficiary, or mortgagee may
16 charge a reasonable fee to the trustor or mortgagor, or the
17 owner of the land, as the case may be, for all services
18 involved in the preparation, execution, and recordation
19 of the full reconveyance, including, but not limited to,
20 document preparation and forwarding services rendered
21 to effect the full reconveyance, and, in addition, may
22 collect official fees. This fee may be made payable no
23 earlier than the opening of a bona fide escrow or no more
24 than 60 days prior to the full satisfaction of the obligation
25 secured by the deed of trust or mortgage.

26 (2) If the fee charged pursuant to this subdivision does
27 not exceed sixty-five dollars (\$65), the fee is conclusively
28 presumed to be reasonable.

29 (g) For purposes of this section, “original” may
30 include an optically imaged reproduction when the
31 following requirements are met:

32 (1) The trustee receiving the request for
33 reconveyance and executing the reconveyance as
34 provided in subdivision (b) is an affiliate or subsidiary of
35 the beneficiary or an affiliate or subsidiary of the assignee
36 of the beneficiary, respectively.

37 (2) The optical image storage media used to store the
38 document shall be nonerasable write once, read many
39 (WORM) optical image media that does not allow
40 changes to the stored document.

1 (3) The optical image reproduction shall be made
2 consistent with the minimum standards of quality
3 approved by either the National Institute of Standards
4 and Technology or the Association for Information and
5 Image Management.

6 (4) Written authentication identifying the optical
7 image reproduction as an unaltered copy of the note,
8 deed of trust, or mortgage shall be stamped or printed on
9 the optical image reproduction.

